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UTAH APPELLATE COURTS
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IN THE SUPREME COURT OF THE STATE OF UTAH

IN RE: UTAH STATE BAR, Petitioner.	)))))	PETITION TO AMEND LAW STUDENT ASSISTANCE RULE 14-807

The UTAH STATE BAR ("Bar") hereby files this Petition to Amend Law Student Assistance Rule 14-807. The revisions would expand the scope of Rule 14-807 to include recent law school graduates and permit them to practice law under supervised circumstances from the point of graduation until the earlier of one of the specific occurrences outlined in revised section (j)(2). The new inclusion is largely commensurate with corresponding rules in other states[1] and along with necessary safeguards in place, provides benefits for approved legal services organizations providing pro bono services, government-related entities such as the Utah Attorney General's Office or even smaller municipality legal

[1] Prior to submitting this Petition, the Bar's General Counsel researched similar rules in all 50 states. While a few jurisdictions such as Montana have a rule more like Utah's current rule, a significant number have rules which allow law school graduates to temporarily practice under limited circumstances. While the proposed changes would expand Utah's current rule, it is still less complicated than rules in other states because it does not create a separate Bar or court program which would need to be staffed and administered.

offices, and finally recent law school graduates who are gaining additional practical experience.

In a regularly-scheduled meeting held December 3, 2010, the Board of Bar Commissioners ("Commission") discussed revising Rule 14-807 which allows third year law school students to gain practical legal experience under the supervision of a Utah attorney. It was brought to the Commission's attention that a number of other jurisdictions allow qualified law school graduates to engage in the same type of limited practice during the few months before he or she is admitted to the Bar. As pointed out by a municipal attorney who attended the meeting and who regularly mentors these law school students, government entities particularly benefit from this type of legal assistance during difficult economic times. The new graduate would also profit from professional networking opportunities as well as exposure to legal experience in the real world. The Commission believes that the experience law school students and graduates receive under the direct supervision of a seasoned attorney goes one step further towards preparing these individuals for competent courtroom practice.

PROPOSED RULE REVISIONS

A copy of the current law student assistance rule (Rule 14-807) is attached as Exhibit "A." In its present form, this rule permits third year law students to engage in limited practice as long as the student is supervised and the presiding judge as well as other counsel approves of the student's participation. Under the proposed revisions, this part of the rule would not

change substantively. Proposed revisions to current Rule 14-807 which would expand its scope are attached at Exhibit "B" and a clean copy of the revised rule is attached at Exhibit "C." Explanations underlying the requested changes are as follows:

Section (a) is new and substantive. This section provides an express purpose underlying the current provisions allowing third year law students to practice. It also provides a purpose for the new group, recent law school graduates, as well. The language incorporates core concepts such as temporary practice, limited circumstances and meaningful oversight in the form of a supervising attorney. The section explains that part of the rationale underlying the rule is to help expand the availability of legal services, particularly to those of limited means.

Section (b)'s revisions are substantive in that those changes permit eligible recent law school graduates to practice law in the same fashion as third year law students. Law school students often avail themselves of this opportunity through a law school's clinical program which obviously is unavailable to those who have graduated.

Sections (c), (c)(1) and (c)(2) are new and substantive. Although these sections reiterate language in the current rule permitting third year law students to participate, new is the category of recent law school graduates. Most importantly, (c)(2) specifies that not all graduates are eligible to practice under the rule and limits participation to those graduating from an ABA approved law

school who have submitted a timely application to the Bar for the first regularly-scheduled Bar examination after graduation.

Section (d) is new. It adds "administrative matters" to the existing civil and misdemeanor cases in which third year law students (and new graduates) can participate.

Section (e) has been slightly modified to include new law school graduates in order to subject them to the same existing restrictions applying to qualified law students.

Section (f) is new and substantive. In order to provide the necessary safeguards to ensure that a law school student or graduate is eligible to participate in legal service under this rule, section (f) spells out that the supervising attorney has the responsibility to verify that the student or graduate complies with Rule 14-807's requirements. These requirements are neither extensive nor difficult and the burden placed on the supervising attorney is not an onerous one. Some requirements are already in place in the current rule (such as a written stipulation by all counsel that a student can participate as set forth below in section (g)). Other requirements are new as described below.

Section (g) has been slightly modified to include recent graduates under an existing provision requiring that all counsel stipulate to the individual's participation.

Sections (h) and (h)(1) through (h)(3) are new and substantive. This section applies only to recent law school graduates because nearly all third year law students are already participating in a law school clinic that monitors the

student's eligibility. It sets forth new requirements relating to recent graduates in order to ensure that these individuals do not continue to practice beyond the temporary period of time contemplated by the rule unless they are admitted and licensed. Section (h)(1) specifies that the graduate shall provide the Bar's admission department with the name of the supervising attorney. Section (h)(2) specifies that the graduate must also provide the Bar with a release that allows the Bar to share the graduate's status in the admission's process with the supervising attorney. For instance, if a graduate fails to submit a timely application to the Bar for the first regularly-scheduled examination after graduation, the individual no longer qualifies to practice under the rule. Section (h)(3) requires a signed and dated letter from the graduate's supervising attorney stating that he or she is aware of the restrictions governing the graduate's eligibility to practice under the rule.

Section (i) revisions merely add recent law school graduates to a currently existing provision which prohibits the participant from receiving compensation from the client on whose behalf the services are being rendered.

Sections (j), (j)(1) and (j)(2) are new and substantive. These new sections contain important and express language relating to termination of the law student's or graduate's eligibility to temporarily practice law. Under section (j)(1), a student's eligibility ends with cessation of enrollment. Under section (j)(2), a recent graduate's eligibility ends upon the earlier occurrence of four different scenarios. The enumerated occurrences are designed to prevent a law school graduate from continuing to practice under a temporary provision when

the individual fails to proceed through the regular and timely steps for admission to the Bar.

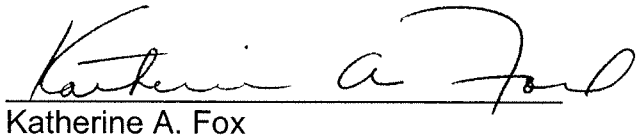
Finally, expanding the scope of Rule 14-807 makes changes to the current definition of "supervising attorney" in another rule - Rule 14-801 (Definitions) - necessary because in its present form, the term only applies in the context of another rule which governs attorneys on inactive status performing pro bono work for approved legal services organizations (Rule 14-803). With the proposed revisions to the law student assistance rule, the definition of "supervising attorney" is expanded to include those lawyers on active status who are generally supervising third year law students and recent law school graduates, whether or not those lawyers are working for approved legal services organizations. A redlined copy of Rule 14-801 containing suggested revisions to the definition of "supervising attorney" commensurate with allowing recent law school graduates to practice is attached as Exhibit "D."

CONCLUSION

The Commission believes that carefully enlarging Rule 14-807's parameters is a win-win situation for approved legal services organizations providing important pro bono services to those in need, to government entities that continue to experience severe economical cut backs, and to recent law school graduates who will continue to achieve valuable and practical legal experience. With important, but simple safeguards in place to ensure that unlicensed individuals will not continue to practice for an indefinite period of time after law school graduation, the proposed changes minimize the risk of abuse.

The Commission respectfully requests that the Court approve and adopt the proposed revisions.

Dated this 19 day of April, 2011.



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